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ABAYOMI OTIS BROWN,
Plaintiff,
v.
SAN MATEO COUNTY SHERIFF
OFFICE,
Defendant.

Case No. 16-cv-06798-JST (PR)

ORDER OF DISMISSAL

INTRODUCTION

Plaintiff, an inmate at the San Mateo County Jail, filed this pro se civil rights action pursuant to 42 U.S.C. § 1983, alleging claims arising from his assault by a rival gang member. The Court identified various deficiencies in plaintiff's complaint and dismissed it with leave to amend. Plaintiff then filed an amended complaint, which is now before the Court for review.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). Pro se pleadings must be liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

1 **B. Legal Claims**

2 In his amended complaint, plaintiff alleges on February 12, 2016, he was housed in a pod
3 that held two rival gangs. Defendant Deputy Bernacil called plaintiff out of his cell so that
4 plaintiff could receive his medication. As plaintiff was receiving his medication, he noticed a rival
5 gang member also out of his cell, and they instantly began to fight.

6 The Court noted that, in his original complaint, plaintiff appeared to be attempting to state
7 a claim for deliberate indifference to his safety and identified the basic flaws in his complaint.
8 The Court noted that the legal standard for a deliberate indifference claim is different for pretrial
9 detainees as opposed to convicted prisoners. The Court explained to plaintiff the legal standard
10 under both scenarios and provided plaintiff with thirty days in which to file an amended
11 complaint. In the amended complaint, plaintiff clarifies that he was not a pretrial detainee at the
12 time of the events at issue but rather a convicted prisoner serving the balance of his sentence at the
13 county jail. Accordingly, the Eighth Amendment standard for deliberate indifference applies.

14 The Eighth Amendment requires that prison officials take reasonable measures to
15 guarantee the safety of prisoners. Farmer v. Brennan, 511 U.S. 825, 832 (1994). This includes
16 prison officials' duty to protect prisoners from violence at the hands of other prisoners. Id. at 833;
17 Hearns v. Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005); Gillespie v. Civiletti, 629 F.2d 637, 642
18 & n.3 (9th Cir. 1980). However, the failure of prison officials to protect inmates from attacks by
19 other inmates or from dangerous conditions at a prison violates the Eighth Amendment only when
20 two requirements are met: (1) the deprivation alleged is, objectively, sufficiently serious; and
21 (2) the prison official is, subjectively, deliberately indifferent to the inmate's safety. Farmer, 511
22 U.S. at 834; Hearns, 413 F.3d at 1040-41. The official must both be aware of facts from which the
23 inference could be drawn that a substantial risk of serious harm exists, and he must also draw the
24 inference. See Farmer, 511 U.S. at 837.

25 In the amended complaint, plaintiff complains that Deputy Bernacil did not protect him
26 from an assault by another prisoner. Plaintiff does not allege, however, that Deputy Bernacil had
27 any knowledge that a rival gang member was in plaintiff's vicinity let alone any forewarning of
28 the impending fight. Indeed, plaintiff's prior filings specify that the officer in charge was simply

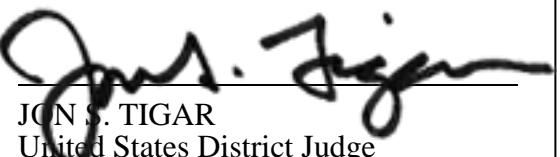
1 not paying attention to what was happening in the pod because he was “on the phone laughing
2 with his feet kicked up.” See dkt. no. 1 at 3. Plaintiff’s allegations at most describe negligence or
3 gross negligence, neither of which constitutes deliberate indifference. See Farmer, 511 U.S. at
4 835-36 & n.4.

5 **CONCLUSION**

6 For the foregoing reasons, this case is DISMISSED. Dismissal is without leave to amend
7 because plaintiff has been given an opportunity to amend and it appears that further amendment
8 would be futile. However, dismissal is without prejudice to plaintiff pursuing in state court any
9 claims he may have under state law. The Clerk shall enter judgment in favor of defendant, and
10 close the file.

11 **IT IS SO ORDERED.**

12 Dated: March 30, 2017

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15 JON S. TIGAR
United States District Judge